



PRIVACY AWARENESS

Privacy Act Exceptions and Exemptions

Most of the National Institutes of Health (NIH) Privacy Act Systems of Records are non-exempt, meaning that there is no exemption rule claimed for the systems of records. It means the records contained with the system are releasable to the subject of the file in their entirety. However, there are exceptions to the rule:

- Records that contain information about a third party; and
- Information that is not about the subject of the file, and therefore not accessible under the PA.

Records that are **excepted** from Privacy Act access include:

(d)(5) – 5 U.S.C. Section 552a(d)(5) (Litigation Protection) – “records compiled in reasonable anticipation of a civil action or proceeding.”

Records that are **exempted** from Privacy Act access include:

General Exemptions 5 U.S.C. Section 552a(j):

- **(j)(1) – 5 U.S.C. Section 552a(j)(1) (CIA Systems of Records)** – “records maintained by the Central Intelligence Agency”; and
- **(j)(2) – 5 U.S.C. Section 552a(j)(2) (Criminal Investigatory Records)** – “records maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws”. This requirement is usually met by such obvious law enforcement components as the FBI, DEA and BATF. In addition, Justice Department components such as the U.S. Parole Commission, the Federal Bureau of Prisons, and the Office of the Pardon Attorney, have been held to qualify as “principal function” criminal law enforcement entities.

Specific Exemptions 5 U.S.C. Section 552a(k):

- **(k)(1) – 5 U.S.C. Section 552a(k)(1) (Classified Records)** - “subject to the provisions of section 552(b)(1) of this title”;
- **(k)(2) – 5 U.S.C. Section 552a(k)(2) (Law Enforcement Investigative Records)** - “investigatory material compiled for law enforcement purposes other than material within the scope of subsection (j)(2) of this section”;
- **(k)(3) – 5 U.S.C. Section 552a(k)(3) (Secret Service Records)** - “records maintained in connection with providing protective services to the President of the United States or other individuals pursuant to Section 3056 of Title 18”;
- **(k)(4) – 5 U.S.C. Section 552a(k)(4) (Statistical Records)** - “records required by statute to be maintained and used solely as statistical records”;
- **(k)(5) – 5 U.S.C. Section 552a(k)(5) (Background Investigative Records)** - “investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section [9-27-75], under an implied promise that the identity of the source would be held in confidence”;
- **(k)(6) – 5 U.S.C. Section 552a(k)(6) (Testing Records)** - “testing or examination material used solely to determine individual qualifications for appointment or promotion in the federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process”; and
- **(k)(7) – 5 U.S.C. Section 552a(k)(7) (Military Evaluation Records)** - “evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section [9-25-75], under an implied promise that the identity of the source would be held in confidence”.